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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,265	02/16/2004	James W. Rudolph	4865 / 134	2216
757	7590	06/12/2007	EXAMINER	
BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			CHEN, BRETT P	
ART UNIT		PAPER NUMBER		
		1762		
MAIL DATE		DELIVERY MODE		
06/12/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/780,265	RUDOLPH ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	B. Chen	1762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 02 May 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-35,37-45,47-49 and 51-56 is/are pending in the application.
  - 4a) Of the above claim(s) 1-33 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 34,35,37-45,47-49 and 51-56 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____.                         |

## **DETAILED ACTION**

Claims 1-35, 37-45, 47-49, 51-56 are pending in this application, which is an RCE of Serial Number 10/780265. Amended claims 34, 42, 52-54; canceled claims 36, 46, 50; and newly added claims 55-56 are noted in the preliminary amendment dated 5/2/07.

Claims 1-33 are withdrawn from consideration as being directed to a nonelected invention.

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/2/07 has been entered.

### ***Specification***

Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

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The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

It is noted that the claimed invention is directed to a method. The examiner suggests amending the abstract to reflect same.

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

It is noted that the claimed invention is directed solely to a method. The examiner suggests amending the title to reflect same.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 34-35, 37-45, 47-49, 51-56 are rejected under 35 U.S.C. 112, second paragraph,** as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 34 lines 4-5, 8, the term “ring-like spacers” is deemed vague and indefinite as to what ring-like means. The term “ring-like” is considered indefinite because the addition of the

word “-like” to an otherwise definite expression extends the scope of the expression so as to render it indefinite. The same issue applies to independent claim 42, from which all the other claims depend from.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 34-35, 37-45, 47-49, 51-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Purdy et al. (6,780,462).** Purdy discloses a pressure gradient process for infiltrating a reactant gas into a porous structure using pressure gradient CVI/CVD in which a first portion of the porous structure is subjected to greater pressure than a second portion of the porous structure for use in aircraft brakes (col.3 lines 38-51). In a pressure gradient CVI/CVD process, the reactant gas is forced to flow through the porous structure by inducing a pressure gradient from one surface of the porous structure to an opposing surface of the porous structure (col.2 lines 12-15). The process can include introducing a reactant gas into a sealed preheater

disposed within the CVI/CVD furnace, the sealed preheater having a preheater inlet and a preheater outlet, the reactant gas being introduced into the preheater inlet and exiting the sealed preheater through the preheater outlet and infiltrating at least one porous structure disposed within the CVI/CVD furnace; heating the at least one porous structure; heating the sealed preheater to a preheater temperature greater than the reactant gas temperature; sensing a gas temperature of the reactant gas proximate the outlet; adjusting the preheater temperature to achieve a desired gas temperature; and exhausting the reactant gas from the CVI/CVD furnace (col.4 lines 1-39). The porous structure 22 includes a porous structure aperture 23 and can be sealed between the plates by ring-like spacers 62 and 64, and the plates 38 and 40 are held together by tie-rods 66 (col.6 lines 61-67). The gas is introduced to the porous structure aperture 23 at a greater pressure than the reactor volume pressure which develops a pressure gradient through the porous wall 68 and forces dispersion of the gas through porous structure 22 before being withdrawn from the reactor volume 35 and the furnace volume 14 by the vacuum apparatus 58 as indicated by arrows 34, 36, and 28 (col.7 lines 1-10). However, the reference fails to teach the claimed average density numbers.

It is noted that the reference clearly teaches that a density of about 2.1 g/cc is desired (col.21 lines 28-38) and that the density gain can be from 0.3 –1.1 g/cc as noted in Table 1. One skilled in the art after reading Purdy would realize that densities around the 1-2 g/cc are reasonable and the desire is to densify the porous structures. Hence, it would have been obvious to one skilled in the art to utilize the specific densities because Purdy teaches that the densities are generally around the 1-2 g/cc and the desire to densify the porous structures.

The limitations of claims 35, 37-45, 47-49, 51-56 have been addressed above.

***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

**Claims 34-35, 37-45, 47-49, 51-56 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-53 of U.S. Patent No. 6,780,462. Although the conflicting claims are not identical, they are not patentably distinct from each other because the specification of the average density is an obvious variation.**

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to B. Chen whose telephone number is (571) 272-1417. The examiner can normally be reached on 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on (571) 272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Bc  
6/10/07



BRET CHEN  
PRIMARY EXAMINER